



10000 Torrance Street, Bloomfield, CT 06001-4009 (203) 878-0100 FAX (203) 878-4877

Connecticut State Medical Society Testimony in support of
House Bill 6471 An Act Concerning Most-Favored Nation Clauses in Health Care Contracts
Insurance and Real Estate Committee
March 3, 2011

Senator Crisco, Representative Megna and Members of the Insurance and Real Estate Committee, my name is Matthew Katz and I am the Executive Vice President of the Connecticut State Medical Society (CSMS). On behalf of our more than 7,000 physicians and physician in training members thank you for the opportunity to present this testimony to you today in support of House Bill 6471 An Act Concerning Most-Favored Nation Clauses in Health Care Contracts

This legislation will prohibit the use of a contractual clause by insurers and other contracting entities that are inherently unfair and currently gaining national attention for the detrimental impact they have on physicians and on patient access to care.

"Most favored nations" clauses, though not as common as they once were, limit competition among and between insurers, and also allow for the continuation of health insurer monopolistic and monopsony related behavior to further limit a physician's ability to effectively negotiate contractual terms, including rates and related issues or even unrelated issues such as quality, access and efficiency.

There are two main types of MFN clauses generally in effect in contracts.

- Comparable Rate clauses – under this type of clause, the provider would guarantee the contracting insurer that it would not charge a competitor a rate for a specified service that was less than the rate that it charged the insurer with the MFN clause. If the provider did negotiate a lesser rate, it would be obligated to offer a comparable rate to the insurer with the MFN clause.
- Better Than Rate – under this type of clause, the provider would guarantee the contracting insurer that any rate that was charged for a specific service would be a certain percentage below the lowest rate the provider charged a competing insurer for the same service.

These clauses are fundamentally unfair and limit, if not prohibit a physician from negotiating not only rates, but other terms of their contract in a fair and open marketplace. This limits competition and allows large insurers to dictate terms and conditions, preventing other insurers who are in the market from competing on price or other terms of negotiation and further limit access to this market by other insurers, who may offer other benefits in lieu of payment rates to entice physicians to sign contracts.

When MFN clauses are in effect, providers, including physicians, cannot lower price to attract more business and they cannot effectively negotiate with insurers on areas other than price or cost. In addition, Payors may be less aggressive in offering lower prices if they know an MFN is in effect. This is

not a disadvantage for providers; however, it may increase cost for consumers. MFN clauses may also restrict entry of small payors into the market, especially if the market is already concentrated or highly concentrated, as is Connecticut (looking at local and statewide markets). Fewer competitors may lead to less choice and higher prices. While less plausible but possible in the extreme, MFN clauses could facilitate collusion among providers, such as hospitals, by disallowing competition on price.

CSMS believes that "most favored" or "equally favored" provisions of contracts for medical services should be expressly prohibited as they are in most neighboring states; including Rhode Island, New Hampshire, Vermont and New York, as well as in at least 13 other states across the country.

The Ohio legislature last year formed a Commission to review the matter of MFNs and after an extensive and lengthy review voted to recommend that the Ohio Legislature prohibit or restrict MFN clauses in health care contracts. They based this recommendation on an investigation of both the impact on these restrictive clauses on insurers, as well as hospitals, and found that there are costs to insurers and hospitals associated with the enforcement of MFN clauses, including both direct and indirect costs associated with audits initiated by insurers, and that some of these costs to institutions can be substantial.

CSMS believes that any legislation designed to address this situation of unfair contracting should:

- (1) prohibit an insurer or other entity from granting itself, or its affiliates or subsidiaries, the ability to limit or otherwise restrict the physician from agreeing to accept payment of equal to or lower than received from said insurer or entity;
- (2) prohibit an insurer or other entity from requiring or granting itself the option to require the physician from accepting lower payment from said insurer if the physician accepts lower payment from another contracting or non-contracting entity;
- (3) prohibit the insurer or other entity from restricting or limiting a physician from charging a lower price or fee than the price or fee the physician charges said insurer;
- (4) prohibit the insurer or other entity from requiring the physician to certify that payment is not higher or lower than the payment rate that the physician receives from any other insurer or entity; and
- (5) prohibit the insurer or other entity from requiring termination or renegotiation of the physician agreement if the physician has agreed to accept payment lower than the rate from the said insurer for the provision of medical services.

We ask for your support of this legislation and recognize that when these "most favored" or "equal to" clauses are in physician contracts, they limit a physician's ability to negotiate on rates as well as other terms and have the unintended consequences of restricting access to physicians in lower paying programs, such as Medicare, Medicaid (Husky), SAGA, and Charter Oak or other such programs.

Physicians should be allowed to negotiate on price, but also on cost, quality and efficiency. These contractual clauses do nothing more than limit a physician's ability to negotiate and further limits competition in an already highly concentrated market.

Please Support House Bill 6471.